

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
HALL AND BARTLEY )  
 )  
Licensee of Business, Trunked (YU) Station )  
WQGD364, Middletown, California )

**ORDER OF MODIFICATION**

**Adopted: February 12, 2008**

**Released: February 12, 2008**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order of Modification*, we modify the license of Hall and Bartley (H&B) for Station WQGD364, Middletown, California, by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5. As explained below, we take this action pursuant to an earlier order proposing to modify H&B's license.<sup>1</sup>

2. *Background.* H&B's license for 900 MHz Business Radio Service Station WPPE708, Middletown, California, expired by its own terms on November 15, 2004. On March 21, 2005, H&B filed an application for a new authorization for the same locations and frequencies.<sup>2</sup> The Wireless Telecommunications Bureau, Mobility Division (Division) granted H&B a waiver of the Commission's freeze<sup>3</sup> on new 900 MHz applications,<sup>4</sup> and on December 15, 2006 granted the application under Call Sign WQGD364.

3. On January 3, 2007, Enterprise Wireless Alliance (EWA) asked the Division to revise its licensing action by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5.<sup>5</sup> EWA contended that such action was appropriate because the referenced locations and frequencies did not comply with Section 90.621(b) of the Commission's Rules, which states that co-channel stations in the 900 MHz band must be separated by at least seventy miles unless the prior licensee concurs or the applicant provides an analysis demonstrating that the proposed station meets certain transmitter power and antenna criteria for short spacing.<sup>6</sup> The Division's engineering analysis confirmed that H&B's application did not satisfy the technical criteria of Section 90.621(b), and EWA stated that its research "found no documentation that the above referenced licensee obtained necessary letters of consent from incumbent licensees, nor did EWA

<sup>1</sup> See Hall and Bartley, *Order Proposing Modification*, 22 FCC Rcd 11541 (WTB MD 2007) (*Order Proposing Modification*).

<sup>2</sup> See FCC File No. 0002094603 (filed Mar. 21, 2005 and amended May 27, 2005).

<sup>3</sup> See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005).

<sup>4</sup> See Hall and Bartley, *Order*, 21 FCC Rcd 14348 (WTB MD 2006) (*Waiver Order*).

<sup>5</sup> See Letter dated Jan. 3, 2007 from Andre Cote, Senior Vice President, Enterprise Wireless Alliance, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (EWA Letter).

<sup>6</sup> See C.F.R. § 90.621(b).

locate a waiver of the 900 MHz short spacing table.”<sup>7</sup> Consequently, we proposed to modify the license for Station WQGD364 by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5.<sup>8</sup>

4. *Discussion.* H&B protested the proposed modification of its license within the requisite thirty-day time frame.<sup>9</sup> In its protest, H&B argues that its March 25, 2005 application was not a new application, and was filed as such only because the Commission’s Universal Licensing System would not permit it to be filed differently.<sup>10</sup> This is not correct. As the *Order Proposing Modification* explained, H&B could have filed a renewal application with a request for waiver of Section 1.949 of the Commission’s Rules to permit late renewal.<sup>11</sup> Instead, H&B filed an application for a new station and sought a waiver of the Commission’s freeze on new 900 MHz applications. H&B may not now object to the Division’s failure to grant a waiver that H&B did not clearly request.<sup>12</sup>

5. Based on the record before us, we conclude that it is in the public interest to modify

---

<sup>7</sup> EWA Letter at 1.

<sup>8</sup> See *Order Proposing Modification*, 22 FCC Rcd at 11543 ¶ 7. The Division concluded that the proposed modification would not unduly disrupt H&B’s operations because the predicted service contours of the locations to be deleted largely overlap the predicted service contour of Location 1 within the area in which Station WQGD364’s mobile units are authorized to operate. See *id.* In addition, we note that the locations proposed to be deleted from Station WQGD364 are approximately twenty-seven miles from a transmitter where H&B is licensed for six 900 MHz frequencies under Call Sign WQGD355, and are within that station’s authorized mobile operating area.

<sup>9</sup> See 47 C.F.R. § 1.87(g)(1).

<sup>10</sup> See Petition for Reconsideration at 4-5 (filed July 27, 2007).

<sup>11</sup> See *Order Proposing Modification*, 22 FCC Rcd at 11542 ¶ 6 (citing 47 C.F.R. § 1.949).

<sup>12</sup> A request for waiver of Section 1.949 to permit late renewal would have been governed by the Commission’s policy regarding treatment of late-filed renewal applications in the Wireless Radio Services: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under our rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing. Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures. In determining whether to grant a late-filed application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee. See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999). As the Division noted when it waived the 900 MHz freeze, H&B’s waiver request did not set forth a convincing justification for its failure to file a timely renewal application for Station WPPE708. See *Waiver Order*, 21 FCC Rcd at 14349 n.7 (“HB suggests that it failed to file timely renewal applications because its station records were damaged in a flood. However, HB does not state when the flood occurred, or explain how the flood impaired HB’s ability to respond to the renewal reminder letters mailed in August 2004. Thus, we are unable to conclude, based on the information before us, whether and to what extent the flood is relevant to the matter at hand.”) (citation omitted). The record therefore did not set forth a sufficient basis for a waiver of Section 1.949, to the extent H&B intended to request one. See, e.g., Disneyland Resort, *Order*, 21 FCC Rcd 536, 538-39 ¶¶ 5-7 (WTB PSCID 2006) (denying waiver of Section 1.949 to permit renewal of expired license, but granting waiver of the 900 MHz freeze to permit application for new license); State Contracting and Engineering Corporation, *Order on Reconsideration*, 18 FCC Rcd 1685, 1688 ¶ 9 (WTB PSPWD 2003) (rejecting licensee’s generalized claim that the events of September 11, 2001 impaired its ability to file a timely renewal). Nor does H&B’s objection to the proposed modification provide any further explanation for the failure to renew the license for Station WPPE708.

H&B's license for Station WQGD364 by deleting frequency 939.2375 MHz from Location 1; deleting Locations 2 and 3; and deleting frequency 900.2375 MHz from Locations 4 and 5.

6. *Ordering Clauses.* Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of Commission's Rules, 47 C.F.R. § 1.87, the license of Hall and Bartley for trunked Business Station WQGD364 BE MODIFIED by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5.

7. IT IS FURTHER ORDERED that this *Order of Modification* SHALL BE SENT by certified mail, return receipt requested, to Hall and Bartley, Attn: Scott Bartley, 4701 Old Redwood Highway, Santa Rosa, CA 95401; and to Shulman Rogers Gandal Pordy & Ecker, P.A., Attn: Dana Daberko, 11921 Rockville Pike, 3<sup>rd</sup> Floor, Rockville, MD 20852-2743.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau